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BRENNAN**

COUNSELLORS AT LAW

**CLIENT ALERT**  
**(FEBRUARY 8, 2012)**

**DEADLINE FOR NEW MANDATORY NLRB WORKPLACE POSTING**  
**EXTENDED AGAIN (TO APRIL 30, 2012)**

As explained in the Manchel & Brennan Client Alert dated August, 2011, the National Labor Relations Board (the “NLRB”) implemented a new requirement that all employers post a workplace notice advising employees of their rights under the National Labor Relations Act (*e.g.*, to engage in union organizing and related activities). The original deadline for the posting of this workplace notice was November 14, 2011. In the Fall of 2011, the NLRB postponed the deadline to January 31, 2012. The NLRB recently announced that the deadline has been postponed yet again, this time to April 30, 2012 (due to ongoing litigation over the constitutionality of the posting). The notice is available on the NLRB’s website: <http://www.nlr.gov/poster>.

**MARCH 1, 2012 DEADLINE FOR EMPLOYERS TO OBTAIN CONTRACTUAL ASSURANCE**  
**FROM VENDORS WITH ACCESS TO PERSONAL INFORMATION**

Massachusetts has enacted broad regulations governing the security measures which must be implemented by any party that owns or licenses the “personal information” of Massachusetts residents (often referred to as the “Massachusetts Data Privacy Law”). Personal information is defined as: a Massachusetts resident’s first name and last name or first initial and last name in combination with any one or more of the following that relate to such resident: (a) Social Security number; (b) driver’s license number or state-issued identification card number; or (c) financial account number or credit or debit card number. Given this broad definition, many hiring and employment documents contain personal information.

The various security measures have been phased in over a number of years, with the most immediate deadline occurring on March 1, 2012. Specifically, as of March 1, 2012 (with only a limited exception), all owners or licensors of “personal information” must “by contract” require that third-party service providers who are given access to the personal information “implement and maintain such appropriate security measures for personal information.” For example, if an employer uses a third-party vendor to conduct background checks using personal information of applicants or employees, the employer must have a contract with the vendor that contains specific language regarding the security measures that the vendor must implement. Employers should review all contracts with vendors and other third-parties who are provided access to personal information of applicants, employees and customers to ensure that this contractual requirement is met. If not, a new contract or contract amendment must be put into place.

## **MAY 4, 2012 DEADLINE FOR EMPLOYERS TO IMPLEMENT CORI REFORMS, INCLUDING A WRITTEN CRIMINAL BACKGROUND CHECK POLICY**

In August of 2010, Massachusetts enacted the Criminal Offender Record Information Act (the “CORI Act”), which implemented dramatic changes regarding employers’ use, access to, and maintenance of criminal information regarding applicants and employees. The changes are being implemented in two phases. For the first phase, effective November of 2010, most employers were required to remove any questions regarding an applicant’s criminal history from employment applications used in Massachusetts.

Effective May 4, 2012, a new criminal information database (referred to as “iCORI”) will go “on line” and certain additional requirements will go into effect for employers who use criminal information in making employment decisions. These requirements include: the applicant/employee must sign a specific consent form before an iCORI check is conducted; the employer must verify the applicant’s identity by reviewing a form of government-issued identification; the applicant/employee must be provided a copy of the criminal background check results before being asked any questions regarding the results and before any adverse action; the employer must adopt a specific written policy regarding its use of criminal information, if it conducts more than four criminal background checks in a year; and the employer must retain the signed consent forms for at least one year and must destroy background check results within seven years.

## **GENDER IDENTITY EMPLOYMENT DISCRIMINATION NOW PROHIBITED IN MASSACHUSETTS**

In late 2011, Massachusetts amended its employment discrimination law to add gender identity to the list of protected classes. Gender identity is defined as a person’s “gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.” Effective July 1, 2012, employers covered by the Massachusetts law are prohibited from discriminating against employees or applicants on the basis of their gender identity. Massachusetts employers should revise their anti-discrimination policies and trainings to address this new protected class and ensure that supervisors and managers are aware of this new protected class.

Please contact us if we can be of assistance with regard to the issues presented in this Client Alert.

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